



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

September 24, 2019

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Elijah Saladeen**
Tax Registry No. 924449
Housing PSA 9
Disciplinary Case No. 2017-18229

The above named member of the service appeared before Assistant Deputy Commissioner Nancy R. Ryan on July 31 and August 1, 2019 and was charged with the following:

DISCIPLINARY CASE NO. 2017-18229

1. Said Police Officer Elijah Saladeen, while on duty and assigned to PSA 4, on or about February 24, 2017, at [REDACTED], New York County, did wrongfully use a chokehold against Individual 1.

P.G. 221-01

**FORCE GUIDELINES –
TACTICAL OPERATIONS**

P.G. 221-02

**USE OF FORCE – TACTICAL
OPERATIONS**

2. Said Police Officer Elijah Saladeen, while on duty and assigned to PSA 4, on or about February 24, 2017, at [REDACTED], New York County, did wrongfully use force against Individual 1, in that said Police Officer punched Individual 1 in the face multiple times while Individual 1 was in handcuffs.

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**FORCE GUIDELINES –
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P.G. 221-02

**USE OF FORCE – TACTICAL
OPERATIONS**

3. Said Police Officer Elijah Saladeen, while on duty and assigned to PSA 4, on or about February 24, 2017, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did give inaccurate and misleading statements to the Patrol Supervisor, Sergeant Brendan Cassidy, Tax Registry Number 921204, which resulted in a Threat, Resistance, or Injury Report containing inaccurate information.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS**

4. Said Police Officer Elijah Saladeen, while on duty and assigned to PSA 4, on or about February 24, 2017, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did give inaccurate and misleading statements to the Duty Captain, Deputy Inspector John Potkay, Tax Registry Number 922987, which resulted in an Investigative Supervisor Assessment Report containing inaccurate information.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS**

In a Memorandum dated August 29, 2019, Assistant Deputy Commissioner Nancy R. Ryan found Police Officer Elijah Saladeen Guilty of Specification Nos. 1, 2, 3 and 4 in Disciplinary Case No. 2017-18229. Having previously read the Memorandum and analyzed the facts of this matter, I approved the findings, but disapproved the penalty.

After hearing all the evidence in this matter, I determined that Police Officer Saladeen's separation from the Department was warranted. In a memorandum dated September 17, 2019, Police Officer Saladeen was offered the opportunity to separate from the Department by entering into a post-trial negotiated settlement. However, since Police Officer Saladeen has rejected the offer of a post-trial negotiated settlement, his dismissal from the Department will not be held in abeyance. Therefore, Police Officer Saladeen is dismissed from the Department.



James P. O'Neill
Police Commissioner



POLICE DEPARTMENT

August 29, 2019

-----X-----
In the Matter of the Charges and Specifications : Case No.
- against - : 2017-18229
Police Officer Elijah Saladeen :
Tax Registry No. 924449 :
Housing PSA 9 :
-----X-----

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Samuel Yee, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Craig Hayes, Esq.
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To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

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P.G. 203-10, Page 1, para. 5

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P.G. 203-10, Page 1, para. 5

PUBLIC CONTACT –
PROHIBITED CONDUCT
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REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on July 31 and August 1, 2019. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeant Derby Wancique, Police Officer Natalie Roman, and Deputy Inspector John Potkay as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. After considering the evidence, I find the Respondent Guilty of all Specifications and recommend a penalty of the loss of 45 vacation days.

ANALYSIS

It is undisputed that on February 24, 2017, Respondent and his partner, Police Officer Natalie Roman, both assigned to PSA 4, were on duty, in uniform, in the vicinity of [REDACTED] [REDACTED] in Manhattan. They were youth officers in PSA 4, but on this date they were assigned to go to the [REDACTED] to respond to a report of either a suspicious male or a "sleeper" on the roof of [REDACTED]. When they arrived at the location, they proceeded to go to the 25th floor roof. On the roof landing, Respondent was the first officer who encountered Individual 1. He was then joined by Officer Roman. Individual 1 was immediately placed in handcuffs.

After Individual 1 indicated he knew someone in the building, the officers went to an apartment where a male answered the door and said he didn't know Individual 1. The officers took Individual 1 down to the lobby in an elevator. Respondent and Individual 1 had a physical encounter in the elevator that spilled out into the lobby. While in the lobby, Respondent struck

Individual 1 in the face several times. Individual 1 was transported by EMS to Bellevue Hospital where he received four stitches for a laceration on his left cheek.

Respondent filled out and signed a handwritten Threat, Resistance or Injury (TRI) incident worksheet on which he did not check the box for hand strike in the section for "Type of Force Used by MOS." He did check the box for forcible take down.

The issues in the case are whether Respondent used a chokehold during his physical encounter with Individual 1, whether Respondent wrongfully used force when he punched Individual 1 and whether he gave inaccurate and misleading statements to either Sergeant Brendan Cassidy or Deputy Inspector John Polkay, resulting in reports containing inaccurate information.

Individual 1 did not appear for trial despite being subpoenaed. When interviewed by the Department on February 24, 2017, he said he had been sleeping on the roof when two officers woke him up. (Dep't. Ex 1-B, 3) Respondent pushed him against the wall and was yelling at Individual 1 that he was going to "fuck him up." Respondent asked for an ID and Individual 1 told him he didn't have one. Respondent handcuffed him right away. (Dep't Ex. 1-B, 4-7) Individual 1 told the officers his brother lived in apartment █ and they checked the apartment for him. The officers asked the male occupant if he knew Individual 1 and he said he did not. On the way down in the elevator, Respondent told Individual 1 he would be going to jail or the hospital. Officer Roman was in the elevator with them and she yelled at Individual 1 as well.

As they were getting off the elevator, Individual 1 recalled that he leaned down to his side and Respondent slammed him on the ground where he landed on his face. Respondent then started punching Individual 1 in and around his eye, striking him four or five times. (Dep't. Ex. 1-B, 9-11, 25) Individual 1 was taken by ambulance to the hospital, where he was sedated. (Dep't. Ex. 1-B, 17)

The Department put into evidence three official Department forms, a handwritten Threat, Resistance or Injury ("TRI") Incident Worksheet prepared by Respondent (Dep't Ex. 8), a printout of the TRI reviewed by Sergeant Brendan Cassidy (Dep't Ex. 9), and a TRI Incident – Investigating Supervisor's Assessment Report ("ISAR") (Dep't. Ex. 12). Sergeant Derby Wancique, who was the assigned IAB investigator for this case, testified regarding these documents and his interview with Respondent. He explained that a TRI report is first prepared as a scratch copy by the officer, then reviewed by the patrol sergeant, and submitted to the desk sergeant. It ultimately results in a computerized document. An ISAR is to be written by the duty captain based on the officer's account of what happened. (Tr. 35) Sergeant Wancique reviewed the TRI scratch report prepared by Respondent, the finalized TRI report and the ISAR. In his testimony, he highlighted the following details regarding the scratch TRI:

- On Dep't 8, in the boxed labeled "Type of Force Used by MOS," there were categories listed including "Hand Strike," "Foot Strike," and "Forcible Take Down." However, "Forcible Take Down" was the only box in that section checked off by Respondent. (Tr. 37)
- On Dep't 8, in the box labeled, "How Was Injury Sustained," the only box checked was "Unintentional Action by MOS."
- On Dep't 8, in the box labeled "Supervisor's Recommendations, a box was checked indicating that "Based on information available at the time of this report, I believe the member's actions were in compliance with Department Procedures." Also checked was "I recommend further investigation by the Duty Captain and Patrol Bureau Investigations Unit due to "[a] Substantial Physical Injury to a Subject or Civilian which resulted from Police Activity."

What appears to be Sergeant Brendan Cassidy's signature is beneath the area on the form labeled "Supervisor's Recommendations." Sergeant Wancique testified that information provided by Respondent would have guided Sergeant Cassidy in preparing the form. (Tr. 39) However, Sergeant Cassidy, who is now retired from the NYPD, never appeared to testify at trial, apparently did not have an official interview about the incident, and, most importantly, never even spoke to IAB investigators. Sergeant Wancique made several phone calls to Sergeant Cassidy, but never tried to go to his home [REDACTED] to speak to him there. (Tr. 47-49)

With regard to other Department forms in evidence, Sergeant Wancique testified that there was no mention of hand strikes on the computerized version of the TRI. (Dep't. 9) He further testified that the ISAR was prepared by Deputy Inspector Potkay and one section read, "PO Saladeen grabbed hold on Individual 1 while he was kicking his legs causing both parties to fall to the ground. Individual 1 sustained a laceration to face as a result of the fall." (Tr. 40- 41)

On cross-examination, Sergeant Wancique testified that he was aware that about nine weeks after the incident, Respondent was questioned by CCRB under oath and admitted that he punched Individual 1. Sergeant Wancique also confirmed that Respondent, during his GO-15, admitted he punched Individual 1 in the face. (Tr. 45-46) With regard to the Department forms, Sergeant Wancique acknowledged that there were many accurate statements in the reports and agreed that the TRI was accurate except for the omission of the hand strike. (Tr. 54 55) He also acknowledged that IAB never conducted a GO-15 of Deputy Inspector Potkay, who prepared the ISAR. Sergeant Wancique agreed that it would be important to find out what transpired between the Respondent and Deputy Inspector Potkay in order to determine how the ISAR was generated. (Tr. 60-61)

Police Officer Natalie Roman testified that she was working as Respondent's partner on February 24, 2017. She responded with Respondent to the assignment of a person sleeping on the roof of a building in [REDACTED]. (Tr. 67-69) When they arrived at the 25th floor of the building, she and Respondent searched different stairwells. Respondent was the first one to locate the sleeper, Individual 1. Respondent asked Individual 1 what he was doing in the building. Individual 1 appeared lethargic and disoriented to Officer Roman. Individual 1, who was dressed in very dirty clothing, started to become fidgety and was moving around, so Respondent told him they were going to handcuff him for his own safety. Individual 1 became upset and started cursing and saying he didn't want to go to jail. (Tr. 70-72)

Officer Roman asked Individual 1 if he knew anyone in the building and after he told her his brother lived there, she checked several apartments Individual 1 pointed to. At one apartment, a man answered the door and said he didn't "fucking" know Individual 1. Individual 1 then became very upset and said, "Yeah. You fucking liar." He then started banging his head against the wall. Officer Roman and Respondent put their hands between the wall and Individual 1's head and got him to stop banging. Individual 1 said he couldn't go to jail and that he wanted to die. (Tr. 72-75) Individual 1 continued with these statements and was cursing when he, Officer Roman and Respondent went into the elevator.

While they were in the elevator, Individual 1 pushed his torso into Respondent. Officer Roman and Respondent started wrestling with Individual 1 and the struggle spilled out into the lobby when the elevator doors opened. Officer Roman was trying to grab Individual 1's legs while Respondent was focused on Individual 1's upper body. Individual 1 and Respondent fell to the floor. Individual 1 became calm at some point, but then he tried to get up again and there was another struggle where Individual 1 was kicking and spitting. At one point, Individual 1

had his mouth open near Respondent's arm and Officer Roman screamed out, "Saladeen, he's trying to bite you." (Tr. 76-79)

Officer Roman then heard Respondent punch Individual 1. At the time of the punch, Individual 1 was moving around and his upper front body was in contact with the floor. Officer Roman grabbed Respondent's arm to get him to stop punching Individual 1 because he was "punching him hard." She told Respondent, "You need to fucking stop." (Tr. 83-85)

Officer Suffern and Sergeant Cassidy arrived at the scene and were waiting outside for an ambulance. Respondent, who was standing with Individual 1, grabbed him and pulled him past Officer Roman towards the back of the building. Officer Roman was surprised and didn't know what was going on, so she followed Respondent. When she was in the hallway behind Respondent and Individual 1, she observed Respondent punch Individual 1 in the side while Individual 1 was still handcuffed. (Tr. 87-88) Individual 1 started screaming. Officer Roman became very angry and said to Respondent, "What the fuck are you doing? Stop." She then returned to the front of the building to see if the ambulance was there. (Tr. 90-91)

On cross-examination, Officer Roman agreed that even though Individual 1 was handcuffed, he was a strong individual and it was difficult to control him both inside, and then just outside, of the elevator. She also agreed that Individual 1 was unpredictable throughout the encounter, was actually spitting at certain times, and was actively resisting arrest from the point in the elevator where he turns into Respondent to the point where he goes down to the ground in the hallway. (Tr. 93-94) Officer Roman saw Individual 1's mouth right next to Respondent's arm and thought Respondent was about to be bitten by Individual 1. (Tr. 97) It was after she warned Respondent that he was about to be bitten that she heard the punch. (Tr. 98)

Officer Roman has open charges and specifications related to this incident. One specification alleges that she gave inaccurate and misleading statements that resulted in a TRI report containing inaccurate information. (Tr. 101)

Deputy Inspector Potkay testified that on February 24, 2017, he was the Commanding Officer of PSA 4 and, in that role, he investigated the incident involving Respondent and Individual 1. He interviewed Sergeant Cassidy and Respondent and prepared the ISAR, summarizing his interview with Respondent (Dep't. Ex. 12; Tr. 121-23) There is no mention in the ISAR of any hand strikes or punches used by Respondent on Individual 1. Nor is there any mention that a chokehold may have been used by Respondent or that force was used in a back passageway of the building. Deputy Inspector Potkay testified that at no time did Respondent tell him that Respondent's punch caused Individual 1's injuries. (Tr. 123-25, 128-29)

On cross-examination, Deputy Inspector Potkay acknowledged that his interview with Respondent was not a formal interview, which would have been more detailed, nor was it recorded. He never asked Respondent if he used hand strikes during his encounter with Individual 1 (Tr. 130-134) Deputy Inspector Potkay did not give Respondent the opportunity to read and review the finished ISAR report, which may be amended, before it was filed with IAB (Tr. 137) He was unsure of who typed out the ISAR. He explained that when he has someone else type his reports, he typically gives verbal directions as to what the report should contain. The ISAR admitted into evidence does not have Deputy Inspector Potkay's signature in the field indicated for his signature. He further confirmed that he does not possess any notes from his interview with Respondent. (Tr. 139-42)

Respondent testified that on February 24, 2017, he first saw Individual 1 sitting on the 25th floor roof landing of a building in [REDACTED], seeming disoriented and disheveled. When asked if he lived there, Individual 1 told Respondent he was homeless. Respondent patted

Individual 1 down and cuffed him for Respondent's safety. He elaborated that because of the suspicious nature of someone being on a roof landing, he did not know if Individual 1 had any drugs or sharp needles on him. (Tr. 146-49)

Individual 1 told Respondent he had family in the building so Respondent and his partner Police Officer Roman checked with the occupants of several apartments. One male said, "I don't know that fucking guy." Individual 1 became irate and began to bang his head against the wall. Respondent grabbed Individual 1 away from the wall and Individual 1 became, "a little aggressive," and said he was not going back to jail. (Tr. 149-51)

Respondent next took Individual 1 to the elevator. While in the elevator, Respondent tried to contact the patrol supervisor to determine if they should take Individual 1 to the hospital for a psych evaluation. Individual 1 was compliant when he first got into the elevator but Respondent contended that right before they reached the lobby, Individual 1 "charged" at him and Respondent tried to restrain him. During the struggle, Respondent tried an "arm bar" and attempted to grab him by putting his arm around Individual 1's arm to try to pull him out of the elevator. Respondent testified that once he applied the arm bar, Individual 1 tried to knock him off balance. Individual 1 had his feet in between Respondent's legs. Respondent then took Individual 1 down to the ground. Respondent acknowledged he grabbed Individual 1's arm and had one arm around Individual 1's chest but testified that he never applied pressure to Individual 1's neck during the entire encounter. (Tr. 152-55)

Once Individual 1 and Respondent fell to the ground, Respondent continued grappling with Individual 1 outside the elevator. Individual 1 again became calm at one point and sat in the lobby while Respondent had his hand on him. Individual 1 then "sprang up" from this seated position while Respondent was still trying to contact a supervisor. Individual 1 tried to lock Respondent's legs to take him down and attempted to spit at and bite Respondent.

Respondent struck Individual 1, "to stun him." Respondent testified that Individual 1 was a threat at that point and Respondent wanted to try to stop him from resisting for Respondent's own safety. (Tr. 149-58) Respondent acknowledged that he struck Individual 1 in the face three times while on top of Individual 1, who rear was cuffed on the ground lying either on his side or face down. (Tr. 172-73)

An ambulance was called and Respondent initially waited with Individual 1 in the front lobby area. Respondent testified that he moved Individual 1 to the back of the building because he was told by the patrol supervisor's driver that the ambulance was coming that way. As they were walking, Individual 1 continued to resist by trying to "toss his body." Respondent testified that in response, he just forcibly grabbed Individual 1 and did not recall striking him in the ribs. (Tr. 158- 161)

After the ambulance arrived and transported Individual 1 to the hospital, Respondent briefly spoke to Deputy Inspector (Captain at the time of the incident) Potkay and told him that Individual 1 had resisted and force was used during the arrest. Respondent did not recall if he told Deputy Inspector Potkay that he struck Individual 1. When Respondent filled out the TRI report for this incident, the form was new and he had never filled one out before. He described it as an oversight that he did not check the box for hand strikes on the TRI. Respondent further detailed that he was never given the opportunity to review, comment on, or amend, either the TRI or the ISAR after they were finished. On cross-examination, Respondent admitted that he also never mentioned that he punched Individual 1 in his arrest report, the criminal court complaint, or his activity log. Respondent contended, however, that he was not trying to keep the information about the hand strikes from the Department. He noted that about eight weeks after the incident, during his CCRB interview, he confirmed that he had used force to restrain

Individual 1 and that he punched him in the face. He subsequently admitted to punching Individual 1 in the face during an interview with IAB. (Tr. 161-65, 179, 186)

Four video segments from different areas of the building were introduced into evidence. Dep't. Ex. 4 contains footage of Respondent's interaction with Individual 1 in the elevator. The Department is relying on this video as proof of Specification 1. Dep't. Ex. 5 shows footage of Respondent and Individual 1 exiting the elevator and then in the front lobby. This footage depicts Respondent punching Individual 1. Dep't. Ex. 6 captures Respondent standing with Individual 1 in the front lobby and then starting to move with Individual 1 towards the rear lobby. Dep't Ex. 7 shows Respondent with Individual 1 in the rear lobby.

Specification 1- Chokehold

Specification 1 charges Respondent with wrongfully using a chokehold against Individual 1. Under Patrol Guide Section 221-02, Members of Service are prohibited from using a chokehold. Patrol Guide Section 221-01 defines a chokehold as including, "but not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air." In this case, Individual 1 did not testify so there is no in-court statement from him concerning Respondent exerting any pressure to his throat or windpipe. Nor is there any mention of such pressure, or even contact, made by Respondent to Individual 1's throat or windpipe in Individual 1's hearsay statement that is in evidence. A review of Individual 1's medical records also provides no support for Respondent having used a chokehold on Individual 1. Respondent has testified that his arm was in Individual 1's chest area.

There is, however, video that depicts Respondent's contact with Individual 1. In Dep't. Ex. 4, at time stamps of approximately 10:04:12 to 10:04:16, Respondent's arm can be seen wrapped around Individual 1's neck area with his hand in a position directly under his chin area. Individual 1's head at approximately 10:04:12 goes from upright to being tilted backwards and

his facial expression shows his mouth is open with his teeth appearing to be gritted. At approximately 10:04:15 based on the position of Respondent's arm and hand and the position of Individual 1's head, it appears more likely that not that Respondent used a chokehold on Individual 1. I therefore find Respondent Guilty of Specification 1.

Specification 2- Wrongful Punches

Specification 2 charges Respondent with wrongfully using force against Individual 1 by punching him in the face multiple times while he was handcuffed. Respondent has admitted he punched Individual 1 in the face several times while he was handcuffed, but asserts that use of force was necessary to stun Individual 1 who was resisting and jeopardizing Respondent's safety by trying to bite and spit at him. There is ample evidence based on Respondent's testimony and that of his partner, Officer Roman that Individual 1 was spitting at the officers and was in a position to bite Respondent. I credit Officer Roman's testimony that she clearly called out to Respondent that Individual 1 was about to bite him. While the court certainly recognizes the right of an officer to protect themselves from being bitten or spit on, the question here becomes about whether the level of force used to ensure the officer's safety was appropriate. In this case, I find that it was excessive.

In Dep't. Ex. 5, at time stamp 10:06:32, Individual 1 goes from a sitting position to making an attempt to get up. At approximately 10:06:35, Respondent takes Individual 1 to the floor. Individual 1 is initially on his side and then goes to what appears to be a face down position. At approximately 10:06:37 to 10:06:39, Respondent can be seen cocking his elbow back three times to inflict the punches to Individual 1 that he admitted to. Respondent then can be seen at 10:06:41 and 10:06:52 using what appear to be additional punches on Individual 1 while he is still handcuffed lying on the ground.

Moreover, the tribunal need not rely on the video alone to assess if the level of force used was unnecessary. There is also the testimony of Officer Roman, who had a clear view of what was happening and as a member of the service has had training in the use of force. Officer Roman by her action, as testified to and as seen in the video, of trying to pull Respondent away from Individual 1 and by her statement to Respondent that he needed to stop, indicate that Respondent's partner felt the force used had become excessive.

The court also has taken note of Respondent's interaction with Individual 1 in the rear lobby as somewhat indicative of Respondent's state of mind during his encounter with Individual 1. Officer Roman testified that she was surprised when Respondent took Individual 1 from the front lobby where they were waiting for the ambulance into the back hallway area. Respondent testified that he took Individual 1 to that area by himself because the patrol supervisor's driver told him the ambulance was going to that entrance. I do not credit this explanation. First of all, every other officer on the scene, including the Sergeant, remained at the front entrance. If the ambulance was coming to the back, it seems likely that other officers would have known that and not continued to remain in the front. Even Respondent's partner was surprised that Respondent was moving Individual 1, so she apparently did not have any information that the ambulance would be arriving in the rear lobby area. In the video of this portion of the incident (Dep't. Ex. 7), no other officer who could have advised Respondent of a change in ambulance plans approaches Respondent to speak to him before he moves Individual 1 to the rear area. In addition, as soon as Officer Roman follows Respondent to the back area and then Sergeant Cassidy appears in that hallway, Respondent walks Individual 1 back to the front lobby to presumably continue to wait for the ambulance there.

Officer Roman testified that she heard Respondent again punch Individual 1 while in the back lobby area. Respondent is not charged with anything that transpired in the rear lobby (Tr.

225-26) and he testified that he only forcibly grabbed Individual 1 at that point of the encounter. It is apparent from the video (Dep't. Ex. 7) starting at approximately 10:21:26 that Respondent was roughly pushing Individual 1 into the isolated back lobby area and that, at a minimum, a strong push was used by Respondent against Individual 1 at approximately 10:21:33 when the door can be seen moving as it is knocked into. While the court acknowledges that this behavior occurred after the charged use of unnecessary force in the front lobby, the court finds Respondent's behavior in removing Individual 1 to an isolated area and again having some sort of physical contact with him as evidence, which, while clearly not conclusive, can be seen as supporting a conclusion that Respondent was in an agitated state of mind during his interactions with Individual 1.

Taken in totality, based on the total number of punches used by Respondent; the use of additional punches after the first three Respondent said he used to stun Individual 1; the conclusion of a fellow officer on the scene who had no apparent bias against Respondent, that Respondent should have stopped what he was doing to the handcuffed Individual 1; the fact that the punches Respondent used on Individual 1 resulted in facial injuries which required stitches; and the supporting evidence of Respondent's state of mind; I conclude that the Respondent is Guilty of Specification 2.

Specifications 3 and 4- Inaccurate Paperwork

Specifications 3 and 4 concern paperwork submitted in connection with this incident. With regard to Specification 3, Respondent testified that he did give his scratch TRI report to Sergeant Cassidy. The scratch TRI (Dep't. Ex. 8), which was prepared by Respondent, did not have the box for hand strikes used by a Member of Service checked, as it should have been in this case. This technically constitutes an inaccurate statement that Respondent gave to Sergeant Cassidy by virtue of giving him a scratch report with this omission.

With Regard to Specification 4, Deputy Inspector Potkay testified that the ISAR he prepared summarized his interview of Respondent concerning the incident. He also testified that at no time did Respondent tell him that Individual I's injuries resulted from punches used by Respondent. While defense counsel has argued that Respondent was never given the chance to review the final ISAR or TRI and further argues that Respondent did admit to punching Individual I approximately eight weeks later in more formal interviews, the court finds it more likely than not that Respondent did not initially seek to be forthcoming about the fact he punched Individual I to either Sergeant Cassidy or Deputy Inspector Potkay. Respondent not only failed to check the hand strike box in his scratch TRI, but also failed to make any mention of punches or hand strikes in his arrest report, activity log or criminal complaint.

The omission of information about hand strikes resulted in inaccuracies in both the TRI and the ISAR reports. Accordingly, I find Respondent Guilty of Specifications 3 and 4.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 7, 1999. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

While the Department Advocate has recommend a penalty of termination in this case, the court does not find dismissal to be supported by precedent. With respect to Specification 1, the chokehold in this case did not result in any injury and was not even significant enough to be mentioned by complainant. Recent somewhat similar chokehold cases imposed penalties ranging from 5 to 15 days of lost vacation. See *Disciplinary Case No. 2017-17014*, (May 17, 2019) (seven-year officer with prior discipline forfeited 15 vacation days for (i) wrongfully using

a prohibited chokehold against a civilian, (ii) pressing his forearm against the civilian's neck, thereby obstructing breathing, (iii) wrongfully striking the individual in the chest, (iv) wrongfully striking the individual in the head and (v) refusing to provide his name and shield number. In this case, unlike the present case, the complainant testified in a consistent, logical manner about the force Respondent used and the contact that was made, specifically with the throat. Alleged injuries were confirmed with photographs in evidence and the complainant's account received additional corroboration from the independent eyewitnesses); *Disciplinary Case No. 2016-15000* (July 6, 2018), (fifteen-year sergeant with no disciplinary record forfeited ten (10) vacation days for (i) holding an individual in a chokehold and (ii) restricting said individual's breathing; complainant did not testify); *Disciplinary Case Nos. 2016-14996* (April 17, 2018) (six-year officer with no disciplinary record forfeited ten (10) vacation days for wrongfully using a chokehold. Video evidence showed Respondent's arm briefly making contact with complainant's throat in a manner which may have restricted breathing, thereby constituting a prohibited chokehold); *Disciplinary Case Nos. 2015-13886* (March 29, 2018 (four-year police officer with no disciplinary record forfeited five (5) vacation days for (i) placing an individual into a chokehold and (ii) obstructing said individual's breathing. Lesser penalty was warranted because of violent struggle during which Respondent and other officers were "at risk of serious injury"). Based on the instant facts and guided by precedent, I recommend a penalty of the forfeiture of 10 vacation days for the wrongful use of a prohibited chokehold in this case.

With regard to the punches Respondent delivered to the handcuffed Individual 1, recent cases resulted in penalties ranging from 10 to 30 vacation days. In *Disciplinary Case No. 2016-15759* (March 27, 2017), a fourteen-year detective with no prior disciplinary history negotiated a penalty of 10 vacation days for using force against an individual without justification. During the transport of a violent prisoner to the hospital for psychiatric evaluation, said individual spat at

Respondent. In response, Respondent punched said individual in the face two times while the individual was rear cuffed and strapped to a hospital gurney. In *Disciplinary Case No. 2015-14789* (Dec. 9, 2016), a five-year police officer with no prior formal disciplinary history negotiated a penalty of 30 vacation days for improperly using excessive force on a handcuffed prisoner. As Respondent escorted a handcuffed prisoner out of a homeless shelter, she turned around and spit in his face. Respondent immediately swung his arm at the prisoner, striking her on the left side of the face and knocking her unconscious. *See also Disciplinary Case Nos. 2015-13315 & 2015-13316* (June 23, 2017) (two four-year police officers, both with no disciplinary records, forfeited 15 vacation days each for improperly striking a handcuffed prisoner while he was face-first against a police van being searched).

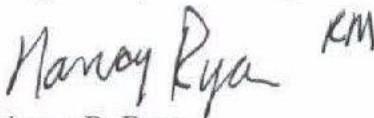
In this case, there were multiple gratuitous punches to a handcuffed individual and that individual ended up requiring stitches for his injuries. On these facts and guided by precedent, I recommend a penalty of the forfeiture of 30 vacation days for Respondent's use of wrongful force against Individual 1.

Finally, with regard to Specifications 3 and 4, the court notes that Respondent is not charged with making false statements but with providing misleading and inaccurate information that caused certain reports to be inaccurate or incomplete. The court also takes note of a mitigating factor in that except for the omission of checking the hand strike box on the scratch TRI, the information recorded on the form was deemed accurate by the witness from IAB. The court also notes that Respondent did ultimately, when questioned under oath, and at trial, admit to the hand strikes. At the same time, Respondent was not initially that forthcoming with his supervisors, which led to the documentation errors. As a veteran officer, Respondent should have been well-versed in the fact that paperwork must be filled out in a way that accurately and completely reflects the incident, particularly when force has been used and an individual has

sustained injuries. I therefore recommend a penalty of the loss of five additional vacation days to cover Specifications 3 and 4.

In total, to fairly and fully address Respondent's misconduct, the court recommends that Respondent forfeit a total of 45 vacation days.

Respectfully submitted,


Nancy R. Ryan
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ELIJAH SALADEEN
TAX REGISTRY NO. 924449
DISCIPLINARY CASE NO. 2017-18229

Respondent was appointed to the Department on July 7, 1999. On his last three annual performance evaluations, he received 4.0 overall ratings of "Highly Competent" for 2014, 2015 and 2016. [REDACTED]

In 2003, Respondent forfeited 33 suspension days and was placed on dismissal probation for failing to comply with a lawful order.

Respondent also has a monitoring history. From May 10, 2002 to September 30, 2003 and again from November 8, 2004 to November 8, 2005, Respondent was subject to Level I Force Monitoring. In connection with the instant matter, Respondent was placed on Level I Discipline Monitoring on May 12, 2017. Monitoring remains ongoing.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials